# APPENDIX A

In the

DISTRICT COURT OF EL PASO COUNTY, TEXAS
ONE HUNDRED TWENTIETH JUDICIAL DISTRICT

No. 73-1129

EL PASO COIN COMPANY, INC.,
*Plaintiff,*

*v.*

CONTINENTAL AIRWAYS, INC., and
BRANIFF AIRWAYS INCORPORATED,
*Defendants.*

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

In response to the request of the Defendant Braniff Airways Incorporated, in the above entitled and numbered cause, I make and file the following as my findings of fact and conclusions of law therein.

## FINDINGS OF FACT

1.

On December 18, 1972, Plaintiff, El Paso Coin Company, Inc., tendered three (3) cans containing coins to Defendant Continental Airlines, Inc., at El Paso, Texas, for shipment to LaGuardia Airport, New York, New York.

2.

Rapid Airbill No. 005-1307-5532 (Braniff's Exhibit D-1) was prepared at El Paso, Texas, in part by the consignor, Plaintiff herein, and in part by Defendant Continental Airlines, Inc., with a declared value of $26,625.00, and with the shipment described as "one can coin."

3.

Shipment was to be made by Continental to Dallas, for interchange to Braniff, and by Braniff to LaGuardia Airport, New York.

4.

Consignee was Henry Weissblatt, 25 Broad Street, New York, New York, and notation "N.O.A.", meaning notify on arrival at telephone number (212) 943-4141.

5.

No pre-arrangement was made with Continental for the shipment.

6.

Prior to December 18, 1972, Plaintiff had on various occasions shipped cans of coins by Continental, and no pre-arrangement had been made.

7.

Continental accepted the shipment, and forwarded it to Dallas.

8.

In preparing the shipment to go to Dallas, a copy of the airbill was placed in a clear plastic envelope (Continental's Exhibit D-2), so that the airbill could be read while the airbill was still in the envelope.

9.

A lot label (Continental's Exhibit D-3) was attached to the can of coins in question, showing that there was one item of cargo in the particular lot, since separate airbills were prepared on the three cans of coins.

10.

In Dallas, the shipment and the two other cans of coins were delivered by a Continental employee to Braniff, on a cargo truck or wagon.

11.

The cargo on the wagon was tendered to Braniff's employee, L. W. Robinson.

12.

L. W. Robinson did inspect and sign the transfer manifest (Plaintiff's Exhibit 2), which transfer manifest showed LaGuardia Airport as the destination of Rapid Airbill No. 005-1307-5532.

13.

The shipment of coins was in typical form; that is, for sometime prior to December 18, 1972, a requirement that coins be shipped in metal or wood containers, not canvas, had led to the practice of shipping coins in paint cans, as in this case.

14.

Robinson inspected the can, signed the manifest, and moved the can onto a Braniff truck or into a Braniff warehouse area.

15.

Robinson signed for shipment under Airbill No. 005-1307-5532, being the can of coins, and he saw the airbill in the envelope.

16.

No pre-arrangement had been made by Continental with Braniff for the shipment in issue.

17.

Prior to December 18, 1972, Continental had on various occasions shipped cans of coins for Plaintiff to New York, through Dallas and by Braniff, without pre-arrangement.

18.

Robinson knew, on receiving the can of coins, that no pre-arrangement had been made.

19.

Robinson could have refused to accept the shipment, or could have called his superior to determine if it should be refused or accepted.

20.

Braniff changed the routing from LaGuardia Airport in New York to Kennedy Airport in New York.

21.

At a later time, when the loss was investigated, a Dallas employee of Braniff said that the can of coins was placed in a certain igloo at a certain distance from the front of the igloo.

22.

The igloo in question was one that was placed on a Braniff cargo flight to Kennedy Airport in New York, rather than to LaGuardia Airport in New York.

23.

The cargo in the igloo was not identified on a manifest, but the weight of the can of coins was merely added to the total weight of the cargo in the igloo.

24.

The can of coins could have been segregated for special handling by employees who handled the can from the truck, or in the warehouse, or in loading the igloo, or the employees could have called same to the attention of supervisors for a decision on special handling.

25.

Two cans of coins were received by Braniff in New York at Kennedy Airport and were tendered to the consignee on December 22, 1972.

26.

One can of coins (the shipment here in issue) was not tendered to the consignee and could not be found by Braniff.

## CONCLUSIONS OF LAW

1.

Defendant Continental Airlines, Inc., in accepting the can of coins and issuing Rapid Airbill No. 005-1307-5532 (Braniff Exhibit D-1), and by its previous conduct in dealing with the Plaintiff in accepting coins at El Paso, Texas, for shipment, waived the provisions of the applicable tariffs requiring advance arrangements for the shipping of high value cargo.

2.

Defendant Braniff Airways Incorporated, in receiving the can of coins in Dallas with Rapid Airbill No. 005-1307-5532 (Braniff Exhibit D-1) in full view, and by previous conduct, waived the provisions of the applicable tariffs requiring advance arangements for the handling of high value cargo.

3.

Defendant Braniff Airways Incorporated was negligent in changing the routing on the shipment in question from LaGuardia Airport, in New York, to John F. Kennedy Airport, in New York.

4.

Defendant Braniff Airways Incorporated, having undertaken to transport the shipment, as it did, to John F. Kennedy Airport, in New York, was negligent in failing to deliver the shipment to the consignee.

5.

Plaintiff El Paso Coin Company, Inc., is entitled to recover the value of the shipment from Defendants Continental Airlines, Inc., and Braniff Airways Incorporated, jointly and severally.

6.

The value of the coins on December 18, 1972, was $26,625.00.

7.

Plaintiff El Paso Coin Company, Inc., is entitled to recover legal interest on the value of the shipment from December 22, 1972.

8.

Plaintiff El Paso Coin Company, Inc., is not entitled to recover attorneys fees herein.

9.

Loss of the shipment of coins took place during transportation by the carrier Braniff Airlines Incorporated.

10.

Defendant Continental Airlines, Inc., is entitled to indemnity from Defendant Braniff Airways Incorporated.

SIGNED and ENTERED this 21st day of February, 1974.

Hans E. Brockmuller

Judge

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**In the**

**DISTRICT COURT OF EL PASO COUNTY, TEXAS**
**ONE HUNDRED TWENTIETH JUDICIAL DISTRICT**

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**No. 73-1129**

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EL PASO COIN COMPANY, INC.,

*Plaintiff,*

*v.*

CONTINENTAL AIRLINES, INC. and
BRANIFF AIRWAYS INCORPORATED,

*Defendants.*

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## ADDITIONAL FINDINGS OF FACT

On this, the 1st day of March, 1974, in response to the motion of Defendant Braniff Airways Incorporated for additional findings of fact, the Court makes these additional findings of fact, and none other:

1.

Prior to and on December 18, 1972, the effective official Air Freight Tariffs published by the Civil Aeronautics Board as to air freight are as found in Exhibit No. 2 of Defendant Braniff Airways Incorporated.

2.

That the express provisions on Airbill No. 005-1307-5532 entered into by Continental Airlines, Inc., and El Paso Coin Company on December 18, 1972, states the following:

> "1. In rendering the shipment described herein for carriage Shipper agrees to these Conditions of Contract, which no agent or employee of the parties may alter, and that this airbill is non-negotiable and has been prepared by him or on his behalf by the carrier.

"2. It is mutually agreed that the shipment described herein is accepted on the date hereof in apparent good order (except as noted) for carriage as specified herein, subject to governing classifications and tariffs in effect as of the date hereof which are filed in accordance with law. Said classifications and tariffs are available for inspection by the parties hereto and are hereby incorporated into and made a part of this contract."

3.

The applicable tariffs specified that advance arrangements shall be made on shipments of extraordinary value at the time this shipment was made.

4.

Braniff Airways Incorporated had nothing to do with the preparation of Airbill No. 005-1307-5532 nor in the initial acceptance of the shipment on December 18, 1972, from El Paso Coin Company in El Paso, Texas.

Hans E. Brockmuller

Judge

In the

DISTRICT COURT OF EL PASO COUNTY, TEXAS

120TH JUDICIAL DISTRICT

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No. 73-1129

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EL PASO COIN COMPANY, INC.

*v.*

CONTINENTAL AIRLINES, INC. and
BRANIFF AIRWAYS INCORPORATED

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## JUDGMENT

On January 3, 1974, came on to be heard the above cause, and the parties waived a jury and announced ready, and the Court heard the pleadings and evidence, and having considered same and having considered the exhibits and the written arguments of counsel, and the Court being of the opinion that the following judgment should be entered:

It is ORDERED that Plaintiff, EL PASO COIN COMPANY, INC., recover the sum of $26,625.00, with interest on said sum at six percent per annum from December 22, 1972 jointly and severally against Defendants, CONTINENTAL AIRLINES, INC. and BRANIFF AIRWAYS INCORPORATED; and

It is ORDERED that CONINENTAL AIRLINES, INC. recover indemnity against BRANIFF AIRWAYS INCORPORATED.

Costs are taxed against Defendants, jointly and severally, with indemnity to CONTINENTAL.

For the relief ordered, let execution issue. Other relief prayed by Plaintiff is denied.

Signed and entered on January 25th, 1974.

Hans E. Brockmuller

Judge

FORM APPROVED:

Norman N. Rosen

*Attorney for Plaintiff*

William Duncan

*Attorney for Continental*

Sam Sparks

*Attorney for Braniff*